

STATE OF CONNECTICUT



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STATEWIDE GRIEVANCE COMMITTEE

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02/17/2012

OFFICE OF CHIEF DISCIPLINARY C
100 WASHINGTON STREET
HARTFORD CT 06106

DANIEL HENRY KRYZANSKI
LAW OFFICES OF
DANIEL H. KRYZANSKI
30 FERRY BLVD. #2
STRATFORD CT 06615

RE: GRIEVANCE COMPLAINT #11-0509
BLOMBERG vs. KRYZANSKI

Dear Respondent and Disciplinary Counsel:

Enclosed herewith is the decision of the reviewing committee of the Statewide Grievance Committee concerning the above referenced matter. In accordance with the Practice Book Sections 2-35, 2-36 and 2-38(a), the Respondent may, within thirty (30) days of the date of this notice, submit to the Statewide Grievance Committee a request for review of the decision.

A request for review must be sent to the Statewide Grievance Committee at the address listed above.

Sincerely,

Michael P. Bowler

Encl.

cc: Attorney George J. Ferrio
Eric G. Blomberg

**NOTICE REGARDING DECISION
- PRESENTMENT -**

GRIEVANCE COMPLAINT # 110509

THE ATTACHED DECISION IS PRESENTLY STAYED IN ACCORDANCE WITH PRACTICE BOOK §2-35.

SECTION 2-35 STATES, IN PART, AS FOLLOWS:

(e) ... Enforcement of the final decision ... shall be stayed for thirty days from the date of the issuance to the parties of the final decision. In the event the respondent timely submits to the statewide grievance committee a request for review of the final decision of the reviewing committee, such stay shall remain in full force and effect pursuant to Section 2-38(b).

Note: This stay terminates upon the issuance of a final decision by the Statewide Grievance Committee.

DECISION DATE: 2/7/12

STATEWIDE GRIEVANCE COMMITTEE

Eric Blomberg :
Complainant
vs. : Grievance Complaint #11-0509
Daniel Kryzanski :
Respondent

DECISION

Pursuant to Practice Book §2-35, the undersigned, duly-appointed reviewing committee of the Statewide Grievance Committee, conducted a hearing at the Superior Court, 1 Court Street, Middletown, Connecticut on December 14, 2011. The hearing addressed the record of the complaint filed on July 1, 2011, and the probable cause determination rendered by the Fairfield Judicial District Grievance Panel on October 3, 2011, finding that there existed probable cause that the Respondent violated Rule 1.15(f) of the Rules of Professional Conduct.

Notice of the December 14, 2011 hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on October 3, 2011. Pursuant to Practice Book §2-35(d), Assistant Disciplinary Counsel Beth Baldwin pursued the matter before this reviewing committee. The Complainant appeared and testified. The Respondent appeared and testified. Sixteen exhibits were admitted into evidence.

Reviewing committee member Attorney Joseph Foti was not available for the December 14, 2011 hearing. The Assistant Disciplinary Counsel and the Respondent waived the participation of Attorney Joseph Foti in this matter. Accordingly, the matter was considered and decided by the undersigned.

This reviewing committee finds the following facts by clear and convincing evidence:

The Complainant represented Vincent Grant in a product liability case. He performed all of the pretrial work up to and including the pretrial conference. After the pretrial conference, Grant approached the Respondent and indicated he was unhappy with his counsel, he believed his counsel was colluding with the defense and he wanted to hire the Respondent to pursue the trial in this matter. Grant received a retainer agreement from the Respondent on November 18, 2009. The Respondent went with Grant to a meeting at the Complainant's office on November 23, 2009. The Complainant gave the Respondent a copy of the portion of the file that he had available and agreed to copy the rest of the file for the Respondent. The Complainant told the Respondent he was doing this, pursuant to Formal Opinion 31,¹ based on the understanding that he and the Respondent would negotiate a split

¹ Formal Opinion No. 31 of the Connecticut Bar Association's Committee on Professional Ethics opined on when a lawyer was required to turn over a file to successor counsel pursuant

of the fee if the matter was resolved in Grant's favor. The Complainant sent the Respondent a follow-up letter indicating it was his understanding that the Respondent had agreed to comply with Formal Opinion 31. The Respondent did not respond to the letter or indicate that this understanding was incorrect.

Shortly after the Respondent accepted Grant as his client, on December 2, 2009, he loaned Grant \$12,000. The Respondent then began to prepare to take Grant's case to trial. He determined there was no basis for Grant's belief that the Complainant may have been colluding with the defense. He explained in his fee agreement with the client that the Complainant might be entitled to some funds if the matter was resolved in Grant's favor. He prepared notes and lists of things that needed to be done. On one list he noted that he would need to obtain a "lien letter" from the Complainant.

In July of 2010, shortly before trial, Grant's case settled for \$10,000. The Respondent did not tell the Complainant that the case had settled or escrow any funds for the Complainant's out-of-pocket costs or his legal expenses. The Complainant checked the status of the case in July of 2010 because he knew a trial was scheduled. He discovered the case had been withdrawn. He called the Respondent to find out what happened with the case. The Respondent told the Complainant that the case had settled, but he refused to disclose the amount of the settlement. The Complainant called the defense counsel to request additional information about the settlement. Defense counsel told him the value of the settlement. On July 22, 2010, he spoke with the Respondent and asked the Respondent to reimburse his firm's out-of-pocket costs of \$520 and split the legal fee with him. The Respondent told the Complainant he would get back to him but he did not. On August 20, 2010, the Respondent disbursed all of the settlement funds. He took a legal fee of \$3,333.33 and received \$1,000 as partial reimbursement for the loan he made to Grant. He did not notify the Complainant before doing this or have permission from the Complainant to disburse the disputed funds.

The Complainant wrote to the Respondent on July 23, 2010, August 24, 2010 and August 31, 2010 to offer settlement options and inquire into whether or not the money had been placed in escrow. He also offered to resolve the matter by fee arbitration and requested an accounting. When the Respondent refused to communicate with the Complainant, the Complainant filed a civil lawsuit against the Respondent and filed this grievance complaint.

On July 8, 2011, the Respondent wrote to the Complainant and offered to settle the dispute for \$1,000 if the Complainant would agree to withdraw both the civil action and the grievance complaint.

On November 22, 2011, Disciplinary Counsel wrote to the Respondent and requested, pursuant to Rule 8.1 of the Rules of Professional Conduct, that he produce mandated

to Rule 1.16 of the Rules of Professional Conduct. Citation to Formal Opinion 31 is used by the bar as a reference to an agreement by successor counsel to protect prior counsel's legal fee on a matter in exchange for access to prior counsel's file.

financial records including bank statements, copies of checks, withdrawal and deposit slips, Grant's individual client ledger, and his general ledger. Attorneys are required to keep and maintain these records pursuant to Practice Book §2-27. The Respondent produced one page of a heavily redacted check register for April 24, 2010 through November 21, 2011. The check register does not maintain a running balance and accordingly has not been reconciled. The Respondent did not produce an individual ledger for Grant, copies of checks, withdrawal or deposit slips, or bank statements.

This reviewing committee also considered the following:

On September 17, 2010, the Respondent was placed on probation by the superior court so that the Disciplinary Counsel could monitor the Respondent's interaction with his probation officer and treatment provider.

The Respondent admitted it was wrong of him to not reimburse the Complainant's out-of-pocket costs in regard to the lawsuit. He still disputes what amount, if any, of the legal fee should be provided to the Complainant. He did acknowledge that the Complainant did significant work on Grant's file including discovery, depositions and all the pretrial motion work. He also testified that after investigating Grant's claim of the Complainant colluding with defense counsel, there was no merit to the claim.

When asked about the loan he made to his client, the Respondent indicated he had suffered from untreated mental health issues at the time of the loan, he was in a manic state, and he does not recall exactly what occurred vis à vis conversations and communication with the Complainant and Grant. He indicated that Grant defaulted on the loan and owes him money. When asked about the current status of his mental health, the Respondent indicated that he is taking medication for his problems, he is receiving treatment, and the Office of Chief Disciplinary Counsel is monitoring him as a condition of the court ordered probation.

This reviewing committee concludes by clear and convincing evidence that the Respondent violated the Rules of Professional Conduct.

We find there is clear and convincing evidence that the Respondent violated Rule 1.15(f) of the Rules of Professional Conduct. The record is clear that the Complainant only turned over Grant's file to the Respondent because he believed that the Respondent had agreed to protect the legal fee and resolve the splitting of the legal fee if the case was resolved in Grant's favor. The Complainant provided the Respondent with a significant contribution of legal work including all of the discovery, depositions, pre-trial motions, and pre-trial settlement discussions. In July of 2010, the Respondent failed to inform the Complainant that he had received a settlement on the case. The Complainant made a timely claim to the Respondent that he had an interest in the legal fee and that he expected the disputed funds to be placed in escrow until the dispute was resolved. The Respondent did not escrow the disputed legal fee until the matter could be resolved. The Respondent did not reimburse the Complainant his undisputed out-of-pocket costs. The Respondent refused to

communicate with the Complainant or make any attempt to settle the fee dispute despite the fact that he knew the Complainant provided a significant contribution to the client's case. The escrowing of disputed funds in a trust account is one of the most essential roles of an attorney as a professional. Attorneys are viewed as persons to whom significant sums can be entrusted without fear of theft or misappropriation. For all of the foregoing reasons, we find clear and convincing evidence that the Respondent has violated Rule 1.15(f) of the Rules of Professional Conduct.

This reviewing committee concludes that the Respondent's violation of Rule 1.15(f) of the Rules of Professional Conduct warrants a presentment. In determining a presentment was warranted, we considered the Respondent's current disciplinary status of probation and court monitoring.

We also considered whether or not additional charges should be added. We conclude additional charges should be added and find clear and convincing evidence that the Respondent also violated Rules 1.8(e), 8.1 and 8.4(4) of the Rules of Professional Conduct as well as Practice Book §2-27(b).

We find there is clear and convincing evidence that the Respondent violated Rule 1.8(e) of the Rules of Professional Conduct. Rule 1.8(e) prohibits an attorney from providing financial assistance to a client in connection with pending or contemplated litigation. Shortly after Grant hired the Respondent as his attorney, the Respondent provided Grant \$12,000 as financial assistance and received a promissory note. He received a payment of \$1000 towards the debt out of the proceeds of Grant's settlement. This conduct was clearly a violation of Rule 1.8(e).

We find there is clear and convincing evidence that the Respondent violated Rule 8.4(4) of the Rules of Professional Conduct because he offered to condition settlement of the dispute with the Complainant on an agreement to withdraw this grievance complaint. It is prejudicial to the administration of justice to attempt to prevent the court and its disciplinary authorities from investigating allegations of impropriety involving an attorney.

We find there is clear and convincing evidence that the Respondent violated Rule 8.1 and Practice Book §2-27(b). On November 22, 2011, the Disciplinary Counsel made a reasonable request for production of the Respondent's mandated financial records, among other things. The Respondent failed to produce these records. The check register he did produce indicates that he does not maintain the mandated financial records, does not maintain a running balance on funds in his IOLTA account and does not reconcile his check register with his bank statement. The heavy redacting of the Respondent's check register made it impossible to tell if he is commingling funds. The failure to produce bank records and copies of checks made it impossible to tell whether or not the Respondent is even properly maintaining an IOLTA account or is using a personal account. We find there is clear and convincing evidence that the Respondent has violated Rule 8.1 of the Rules of Professional Conduct by failing to produce mandated financial records upon request from the disciplinary

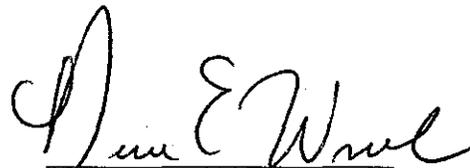
counsel, and redacting his check register, which made it impossible to determine whether he is even maintaining an IOLTA account and whether he has commingled or misused trust funds. We find there is clear and convincing evidence that the Respondent has violated Practice Book §2-27(b), because he is only recording check withdrawals and deposits in a check register and is not maintaining any other financial records: including bank statements, a general ledger with a running balance, individual client ledgers, or quarterly reconciliations. It is not clear from the records that were produced that the Respondent even maintains a separate IOLTA or trust account.

Since we conclude that the Respondent violated Rule 1.15(f) of the Rules of Professional Conduct, we direct the Disciplinary Counsel to file a presentment against the Respondent in the Superior Court for the imposition of whatever discipline is deemed appropriate. Since a presentment is a de novo proceeding, we further direct the Disciplinary Counsel to include the following additional violations in the presentment that the Respondent violated Rules 1.8(e) 8.1 and 8.4(4) of the Rules of Professional Conduct as well as Practice Book §2-27(b).

(D)
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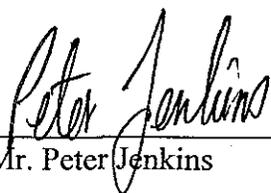
DECISION DATE: 2/17/12

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Attorney Donna Woviotis

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Mr. Peter Jenkins